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09/577,225	05/23/2000	Lundy Lewis	019287-0317271	4215
909 7590 12/13/2007 PILLSBURY WINTHROP SHAW PITTMAN, LLP P.O. BOX 10500 MCLEAN, VA 22102			EXAMINER NGUYEN, TAN D	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

**MAILED**

**DEC 13 2007**

**GROUP 3600**

Application Number: 09/577,225  
Filing Date: May 23, 2000  
Appellant(s): LEWIS, LUNDY

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Rick A. Toering  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 9/20/07 appealing from the Office action  
mailed 3/26/07.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

See related cases identified by the appellant in the brief.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-6, 10-13, 30-33 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over BALL et al (US 6,446,200).

As of 7/24/06, independent method claim 1 is as followed:

1. ( Currently Amended) A method of providing service level management for a business process of an entity, the business process supported by a network, the method comprising steps of:

- identifying a plurality of services that the network provides for the entity in performance of the business process, the business process being supported by the plurality of services, each of the plurality of services being supported by a plurality of network components;
- identifying, for at least one of the plurality of services, parameter that provides a measure of a service level of the at least one of the plurality of services;
- identifying a component parameter that measures a performance of one of the plurality of network components;
- identifying a relationship between the component parameter and the service parameter;
- determining a value of the component parameter;
- monitoring the value of the component parameter via a management protocol

understood by an electronic device associated with the network ,and

- taking an action in the electronic device to determine the service level of the at least one of the plurality of services from the value of the component parameter to provide service level management of the business process.

In a similarly process for providing service level management (SLM), BALL et al discloses a similar method for providing service level management for a business process of an entity associated with a network comprising the steps of:

(a) identifying a plurality of services that the network provides for the entity in performance of the business process, the business process being supported by the plurality of services, each of the plurality of services being supported by a plurality of network components;

{see Figs. 1, 2, 3 “monitoring a TCP/IP Network”, 3, 4, 5, 30, col. 2, lines 1-10 “*new level of service-services ...*”, col. 31 “service quality”},

(b) for at least one of the services, identifying parameter that provides a measure of a service level of the at least one of the plurality of services;

{i.e. “transmission of data, or flow aggregation and distribution process”, “service quality packet loss”, see cols. 3-4, Figs. 29A, 29B, col. 15, lines 20-25 “...*Class of Service Identifiers...*”, “...*Quality of Service Identifiers...*”, col. 31, lines 12-67},

c) identifying a component parameter that measures a performance of a network components (such as transmission device);

{see Fig. 1, elements 12, 13, 14, Fig. 2, elements 52a-52g, which deal with transmission flow such as Flow Data Collectors (FDC) 18, Flow Aggregation Processors (FAP) 80, Flow Data Distributor (FDD), 70, and transmission of data, or flow aggregation and distribution process", "service quality packet loss", see cols. 3-5, Figs. 29A, 29B, col. 31, lines 12-67};

(d) identifying a relationship between the component parameter (such as transmission device and the service parameter (transmission flow or packet loss);

{see col. 31, lines 1-61, especially lines 25-37 "...process collects different kinds of metrics from the network, correlates these metrics to specified network flows, ..., maps collected, correlated information back to policies"};

(e) monitoring the value of the component parameter via a management protocol understood by an electronic device associated with the network ,and

{"packet loss", "availability", see {col. 31, lines 1-67, to col. 33, lines 4-67}, see Fig. 1 (16), (18), (22), Fig. 29A "Monitoring, 702", col. 29, lines 5-50}, and

(f) determining the service level in comparison with the level defined in a service level agreement and taking action to meet the agreement level

{see col. 32, lines 35-67, col. 33, lines 22-67, and especially col. 34, lines 1-6 "detects, monitors, and audits ... services being delivered"}.

Alternatively, the selection of other service parameters or variables among well known parameters, i.e. components or prices or services (availability, response time, security, etc.) would have been obvious as mere selection of other similar parameters or variables from a limited species of parameters/variables. These are fairly taught in col.

15, lines 1-32 "Accountable Network activity Metrics", col. 6, lines 6-11, "other applications ..." and col. 31, lines 25-37 "...process collects different kinds of metrics from the network, correlates these metrics to specified network flows, ..., maps collected, correlated information back to policies".

**As for dep. claim 3** (part of 1 above), which deals with well known service level management parameters, i.e. selection of a component parameters, this is non-essential to the scope of the claimed invention and is taught in Fig. 2, 14, col. 31. Moreover, the phrase "component parameter is capable of" has no patentable weight since it's merely refers to "capacity" and no step/action is taken place or carried out and the component parameter of BALL et al is capable of that.

**As for dep. claims 4-6** (part of 1/2 above), which deals with software/software agents utilized to carry out the monitoring or controlling steps, these are inherently included in BALL et al to carryout the management of service with monitoring functions on the Internet system as shown in Fig. 1 or 3. Moreover, these limitation are not positive written and are considered as non-functional descriptive material because they further discuss about the component or component parameters but does not specifically describe about the features of the component or component parameters not the steps of "identifying" or "determining value" or "monitoring value".

**As for dep. claim 10** (part of 1 above), which deals with a further step of comparing the variable to the service level, this is inherently included in col. 33, line 5 to col. 34, line 6.

**As for dep. claims 11-12** (part of 1 above), which deals with further steps of incorporating the SLA and reporting the status of the service, these are taught in col. 33, line 5 to col. 34, line 6, col. 28, lines 59-67.

**As for dep. claim 13** (part of 1 above), which deals with well known network component parameters, this is non-essential to the scope of the claimed invention and is taught in Fig. 1, 2, 29A, or 31, or col. 1, line 15 to col. 2, line 10.

**As for dep. claims 30-33** (part of 1 above), which deals with well known management monitoring parameters, generating a report or comparing a function or making an adjustment as part of further steps of incorporating the SLA and reporting the status of the service, these are taught in col. 33, line 6 to col. 34, line 6, col. 28, lines 59-67, and col. 28, lines 59-67.

#### **(10) Response to Argument**

Appellant's main arguments on pages 4-7 that BALL et al fail to teach the limitation of the mentioned steps (b)-(f) above. These are not found persuasive for the cited portions in BALL et al as cited above that teach the limitation of steps (b)-(f) above. Appellant cited examples of the service parameters and component parameter on page 5 is noted, but the examples are not in the claim and the claims are not limited by the example. Note that the claim uses language "for at least one of the plurality services" and "one of the plurality of network components", therefore citing one service parameter (transmission flow or packet loss) and one network component (transmission device) is sufficient to meet the claim language. The service parameter and component parameter used for monitoring or management of service of computer network of BALL



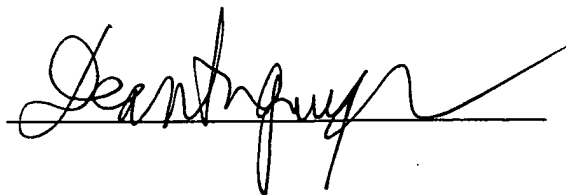
et al reads over the claimed language. As shown on col. 31, lines 5-67, BALL et al teaches the measuring of different kinds of metrics from the network and use packet loss detector monitor to determine the kind of quality of service provided (730) to assess whether the policy specified by the service level agreement was provided to the customer. The use of other network component parameters or service parameters to achieve the same goal which is monitoring the service level of the providing service would have been obvious to a skilled artisan as mere applying other similar network parameters to the same monitoring system to achieve similar results.

Appellant comment that BALL et al does not monitor component parameters that are then specifically related to service parameters of a service to determine the service level but monitors uses "statistical phenomenon" and uses a "large of number of samples" as cited on col. 32, lines 28-31 are noted, but these are not found persuasive in view of the teachings on Figs. 29A, "MONITORING, 702" 29B, Fig. 1, col. 29, lines 5-60 "Protocol Independent Packet Monitor", col. 31, lines 20-67, col. 32, lines 60 to col. 33, line 5, col. 33, lines 22-67. In these paragraphs, BALL et al discloses the monitoring and detecting of the "transmission data packet losses", and "% availability" and inputting these information into an "Accountant" software for billing and monitoring of services provided, see col. 34, lines 1-5, "... detects, monitors, and audits whether those classes in quality of service are being delivered".

For the above reasons, it is believed that the rejections should be sustained.

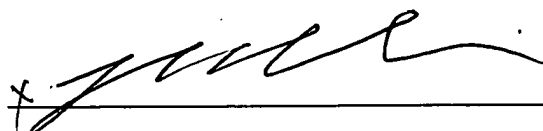
Respectfully submitted,

Dean Tan Nguyen

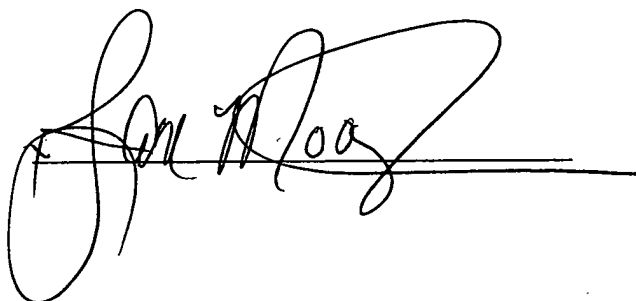
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Conferees:

1) John Weiss, SPE 3629

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2) Janice Mooneyham

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